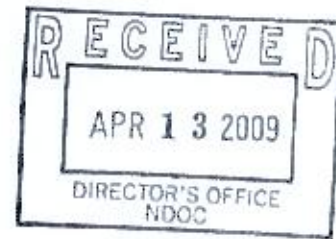


EXHIBIT 13

April 9, 2009

Office of the Secretary of State
State Capitol Building Annex
2 nd Floor
101 North Carson Street
Carson City, Nevada



ATTEN: Board of State Prison Commissioner

RE: MIGUEL ANGEL RAMIREZ, INMATE #23445
INMATE AT ELY STATE PRISON

Dear Board of State Prison Commissioners:

My name is **CARMEN RODRIGUEZ**, and I' am writing and speaking in behalf of my brother **MIGUEL A. RAMIREZ, #23445**, who is incarcerated at the Ely State Prison (ESP).

NOTE: (I do live in Las Vegas, Nevada, and I will be attending the Public Hearing scheduled for April 14, 2009, at 2:00 PM. I do realize on Public Comments, I would only have (5) minutes to speak therefore, I am writing this letter to get your "attention" prior to the open meeting detailing my concern as a family member!)

My brother is serving a five to life sentence now, and has served 23 years. Nevertheless, for 19 years, he's been arbitrarily held at Ely State Prison, and for the last 10 years has been capriciously relegated to a de facto administration Segregation (Ad. Seg.), in a 8x16 CELL, because prison official's alleged and validated him, as maintaining membership in some sort of S.T.G. (Security Threat Group). – I can attest and assure you that my brother has never been a member of a gang, inside or outside of prison.

In 2002, my brother, MIGUEL filed a suit in FEDERAL COURT proclaiming that his "**Constitutional Rights**" were being "**violated**" because he was NOT receiving "procedural due process regarding his **VALIDATION** and indefinite detention in a de-facto Ad. Seg.

On July 6, 2005, a FEDERAL MAGISTRATE issued a Report and Recommendations to N.D.O.C. prison officials, advising them that they **must** provide inmate's (especially my brother) with meaningful periodic reviews of any S.T.G., validations, or classifications which amount to retention in Ad. Seg.

The Federal Court Judge adopted the Magistrate's REPORT and Ordered the Nevada Department of Prisons Defendant's to provide my brother with a Special Classification Hearing. "They did", and they revalidated him with meager and erroneous information, in order to avoid compensatory damages in the lawsuit.

Consequently, while my brother won that lawsuit and was only awarded \$1.00 in nominal damages.....he is still sitting in the 8X16 CELL. *Indeed, since 2005, his S.T.G. or Ad. Seg. Classification's have not been meaning fully revisited, nor has he been allowed to make a personal appearance during any such periodic reviews.* ---So, my brother Miguel, has been compelled to file "another" Federal Suit which is pending, to relitigate these same violations, four (4) years later.

To add insult to injury, in 2004, my brother received a **5 year deferment from the Parole Board, even though under the pre-1995 Statue, under which my brother was sentenced, they were only at Liberty (by Law) to give him a 3-year deferment.** *Moreover, the basis they used to deny my brother's suitability for "parole" was this erroneous gang validation and his arbitrary retention at Maximum Security.*

Furthermore, last month my brother appeared again before the Board regarding his eligibility hearing, and was deferred suitability for a parole for (1) One year this time, and as you may guess.....(they) Board used the basis of his erroneous STG Status and his continued retention at E.S.P. as factors; even though his custody RISK FACTOR SCORE totals 9 – points, and has qualified him for Medium Custody for at least the last five years.

To add injury to injury, for the last (2) two years my brother has suffered the symptoms of a **"serious viral infection"**. During said time, he has pleaded with the Medical Personnel at Ely State Prison, to provide him with adequate medical care and/or treatments. However, they have "consciously disregarded" his pleas for more aggressive treatments and have even posed a "deliberate indifference" to same. As a result, my brother is still suffering the "cruel and unusual punishments of this **"viral infection"**", and has recently informed me that it has affected his "eyes", *which is known to cause blindness!!!* ---- I can assure you, if my brother is "blinded" by this affliction and malpractice, that, "I" as his proxy and family member, will file a major lawsuit to hold those responsible, **LIABLE!!!!** (Note: I have written Dr. Bannister on numerous occasions regarding this issue(I will provide letters upon request) & I have called Ely State Prison speaking to Sgt. Murray, Medical Advisor-not a medical professional) That is the very reason ESP is in the predicament with the ACLU at this current time...due to lack of medical attention.

Page 3
Miguel A. Ramirez #23445

It's no wonder why Nevada is in the mists of a Budget deficit, "a significant amount of our tax-dollars are going towards defending these prisoner lawsuits, which could and should be resolved at the Administrative level of the Department of Corrections!! (The State shouldn't be spending thousands of dollars in order to give Inmate's proper Classification Hearings, etc.)

I'd just like to close, saying that.....it's undeniable that the STATE has a strong interest in orderly administration of it's prison's, including inmate discipline and rehabilitation. But, the Government also has an interest in promoting fair procedures, and the Government derives NO benefit from disciplining inmates who have committed no offense or intentionally misclassifying their custody status. Indeed, the Departments goals of preparing and rehabilitating inmate's for RE-ENTRY into Society, are better achieved if they have been treated "fairly" while incarcerated.

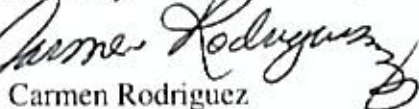
Rehabilitation is an important penological objective, and a prison program bearing a rational relation to that objective does not violate civil rights, as long as the adverse consequences an inmate faces are not "cruel and unusual punishment", and do not constitute a typical and significant hardships in relations to the ordinary incidents of prison life. Currently, a number of the Departments programs do deprive inmates of basic civil rights and are being mismanaged. (i.e., Medical Services; Grievance System & Classification procedures).

"Let's keep in mind that Prison's are not symbols of a Society's advances, but concrete-monuments to its failures! "We should start to change that reality across this country, and we can start right here in the State of Nevada!"

Please advise me of any recommendations you would like to consider for the ESP Medical Staff as far as my brother getting the "medical attention" he currently needs at this time? Also, on the other outlined expressed issues.

Your consideration and prompt attention into this matter is greatly appreciated.

Sincerely,



Carmen Rodriguez
Sister of Miguel A. Ramirez (Inmate) #23445-Ely State Prison

Attachments:

cc: American Civil Liberties Union (ACLU)
Howard Skolnik, NDOC Director
Governor Jim Gibbons



State of Nevada
Department of Corrections
OFFENDER INFORMATION SUMMARY

NDOC ID: 23445

NAME: RAMIREZ, MIGUEL

- OFFENSE IN CUSTODY HISTORY -

OFFENSE DATE / TIME	CHARGED OFFENSE	RESULT OFFENSE
03/31/1998 / 19:25	G14: Failure to Follow Rules and Regs	G14: Failure to Follow Rules and Regs
03/31/1998 / 19:25	MJ21: Theft	MJ21: Theft
03/31/1998 / 19:25	MJ26: Possession of contraband	MJ26: Possession of contraband
09/01/1999 / 14:00	G14: Failure to Follow Rules and Regs	G14: Failure to Follow Rules and Regs
09/01/1999 / 14:00	G1: Disobedience	G1: Disobedience
11/30/2000 / 09:00	G20: Giving False Information	G20: Giving False Information
11/30/2000 / 09:00	MJ31: Unauthorized use equipment or mail	MJ31: Unauthorized use equipment or mail
11/16/2001 / 11:45	G25: Poss. Trade Unauthorized Property	G25: Poss. Trade Unauthorized Property
11/16/2001 / 11:45	G4: Property Damage Less Than \$50	G4: Property Damage Less Than \$50
04/09/2002 / 00:00	MJ26: Possession of contraband	MJ26: Possession of contraband
06/16/2002 / 12:55	G14: Failure to Follow Rules and Regs	G14: Failure to Follow Rules and Regs
06/16/2002 / 12:55	G3: Gambling	G3: Gambling
10/07/2004 / 12:00	M3: Unauthorized Under \$25	M3: Unauthorized Under \$25
03/13/2006 / 09:22	G14: Failure to Follow Rules and Regs	G14: Failure to Follow Rules and Regs
03/13/2006 / 09:22	G1: Disobedience	G1: Disobedience
06/01/2006 / 13:00	MJ26: Possession of contraband	MJ26: Possession of contraband

- EXTERNAL MOVEMENT HISTORY -

MOVE - DATE / TIME	FROM LOC	TO LOC	MOVE TYPE	MOVE REASON
08/29/2006 / 12:37	LCC	ESP	New Commitment - Re-Commitment	Incoming Transfer
05/31/2006 / 12:35	HDSP	LCC	Conversion	Conversion
11/21/2005 / 12:33	NSP	HDSP	Conversion	Conversion
08/12/2005 / 12:31	NVJAIL	NSP	Conversion	Conversion
08/06/2005 / 12:29	NSP	NVJAIL	New Commitment - Re-Commitment	Incoming Transfer
08/03/2005 / 12:27	ESP	NSP	Conversion	Conversion
07/28/1999 / 12:25	SDCC	ESP	Conversion	Conversion
07/20/1999 / 12:23	NVJAIL	SDCC	Conversion	Conversion
08/27/1998 / 12:21	SDCC	NVJAIL	New Commitment - Re-Commitment	Incoming Transfer
08/13/1998 / 12:19	ESP	SDCC	Conversion	Conversion
04/25/1995 / 12:17	NSP	ESP	Conversion	Conversion
01/26/1995 / 12:15	ESP	NSP	Conversion	Conversion
08/23/1994 / 12:13	NSP	ESP	Conversion	Conversion
07/21/1994 / 12:11	ESP	NSP	Conversion	Conversion
01/09/1990 / 12:09	NSP	ESP	Conversion	Conversion
06/11/1987 / 12:07	SDCC	NSP	Conversion	Conversion
03/28/1987 / 12:05	NVHOSP	SDCC	Conversion	Conversion
03/18/1987 / 12:03	SDCC	NVHOSP	New Commitment - Re-Commitment	Incoming Transfer
11/17/1986 / 12:01	OUT	SDCC	New Commitment - Re-Commitment	Admission

Report Name: OAOIS

Reference Name: NOTIS-RPT-OR-0102.1

Run Date: APR-14-09 08:17 AM

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State of Nevada
Department of Corrections
OFFENDER INFORMATION SUMMARY

NDOC ID: 23445

NAME: RAMIREZ, MIGUEL

- PRIOR FELONY CONVICTIONS / HOLDS & DETAINERS -

ORDER DT	CASE TYPE	ORDER TYPE / SUB COMMENT	OFFENSE CODE / DESCRIPTION	OFFENSE DT
06/05/2007	PRI_FEL	OJD / OTH_JD	2496 ATT POSSESSION STOLEN PROPERTY	06/05/2007
06/05/2007	PRI_FEL	OJD / OTH_JD		
06/05/2007	PRI_FEL	OJD / OTH_JD	299 BURGLARY	06/05/2007

- CASE NOTES -

RESTRICTED CASE NOTES HAVE BEEN REMOVED FROM THIS REPORT

07/21/1999 - 10:38 [General Case Notes / General Case Note]: WILLICK - SUBJECT RECEIVED FROM OTC. HE IS SERVING DS UNTIL 1/2000 AND IS AN ESP INMATE. THE CURRENT COURT MATTER IS COMPLETED, ALTHOUGH SUBJECT CLAIMS THAT SINCE HIS ATTORNEY IS GOING TO REFILE A MOTION TO WITHDRAW HIS GUILTY PLEA, HE SHOULD HAVE BEEN LEFT AT CCDC TO FIGHT THE CASE. HE WILL REMAIN ON DS, AND WILL BE RETURNED TO ESP ASAP.

07/28/1999 - 06:05 [General Case Notes / General Case Note]: WHITE - I/M RAMIREZ TX'D TO ESP 7/28/99, RTN FROM OTC. S. WHITE CCS1

07/28/1999 - 05:25 [General Case Notes / General Case Note]: DONAT - INITIAL ESP. REC'D THIS DATE F/SDCC, WAS OTC SINCE 8-98 F/ESP. A REVIEW OF HIS DISP SEG TIME, REFLECTED TIME CUTS WERE WARRANTED. NEW DATE AT THIS TIME APPEARS TO BE 8-19-99. A REVIEW BY MLU WILL BE SCHED FOR 8-17-99. CMC SEPARTEES MAY NEED TO BE CLARIFIED AND/OR UPDATED BY THE UNIT CCWS. NO CONCERNS RE: ENEMIES OR PROBS. NO URGENT PROBS NOTED, BUT STATED HE HAS AN INFECTION IN HIS NOSE. **GANG AFFILIATION, HE STATED NONE.** NO NICKNAME NOTED, SO HE SAYS. NOK UPDATED IN I-FILE. NOTE INVOLVEMENT IN PRIOR ASSAULT BEFORE CONSIDERING PLACEMENT INTO GP/LEVEL 4. DONAT-AWP; ZAMORA-CERT; ENDEL-CCWS3; MARR-MHP; SMITH-LPN.

08/10/1999 - 12:46 [Classification / Re-Classification (Per)]: PERINO/C - REG REV. RFS:12 SEC A DUE TO MJ15 ON 11-21-97. PED: DENIED TO DISCHARGE. EXP:9-3-99 TO CS SENTENCE. I/M THOUGHT HE HAD EXPIRED THE LAST SENTENCE BUT IT WAS EXPLAINED THAT BEING UNASSIGNED WOULD MOVE THE DATE AWAY. I/M STATES THAT HE IS IN COURT ABOUT HIS LAST 2 CC SENTENCES AND REQUESTED A PERMANENT MOVE TO SDCC AS THAT HE WOULD BE MORE AVAILABLE TO THE COURTS. ADVISED I/M THAT IT WOULD BE DISCUSSED DUE TO NEED FOR POINT OVERRIDE. QUALIFIES FOR 30 DAY TIME CUT AND WILL BE PLACED ON AD SEG THIS DATE. HAS CMC AT SDCC, LCC AND HERE AT ESP. ADVISED I/M THAT HE WOULD HAVE TO BE WILLING TO GO TO ANY MED FOR CONSIDERATION OF MOVE. ADVISED I/M THAT RESEARCH WILL BE DONE AND OPTIONS EXPLORED. HAS BEEN KNOWN TO AFFILIATE MRU. NO OTHER PROBLEMS NOTED. PERINO WILLIS DRAKE 1137 08-13-1999 HUMPHREY DS ENTRY NOTES DS OUT 1-2000; SHOULD BE UPDATED SINCE HE WAS GIVEN A TIME CUT AND IS NOW IN DS

09/22/1999 - 10:06 [General Case Notes / General Case Note]: PERINO - AS REV. PERSONAL. I/M IS BEING REV FOR CUSTODY AND HOUSING. HAS PENDING DISCIPLINARY. ADVISED TO CHECK W/TELEPHONE ADMIN ABOUT PHONE NOT WORKING. CONTINUE AD SEG. DISCUSSED 2ND LEVEL GRIEVANCES NOT AVAILABLE IN UNIT CONTROL. WILL CHECK ON WHERE HIS GRIEVANCES ARE IN THE PROCESS. NO OTHER PROBLEMS NOTED. PERINO KERR LEWIS

10/26/1999 - 11:23 [General Case Notes / General Case Note]: WAGGENER - ESP/AS REV/PERSONAL I/M SEEN TO REV CUSTODY AND HOUSING. HE IS MLU-AS WITH HIS LAST DISCIP G-14, 3-31-98. **HE REQUESTED A TX TO MED. BECAUSE HE HAS BEEN @ MAX FOR 12Y & FEELS HE DESERVES A CHANCE.** HIS RFS AND DISCIP HIST DISCUSSED. RFS 12 SEC A DUE TO MJ-15, 11-27-97. PER FILE ENTRY HE WAS REMOVED FRM DS TO MLU-AS EFFECTIVE 8-10-99. HE WANTS TO MOVE TO LEVEL 4 AND BEYOND TO MEET GUIDELINES FOR POSSIBLE TX. HE CLMS HE WON'T HAVE ANY PRBLMS & DOESN'T EXPECT ANY. HE IS SCHEDULED FOR FCC 11-9-99. C/O K. SMITH, C/O DOTY, NIECKO-MHP, B. KERR, Z. WAGGENER

11/10/1999 - 03:54 [General Case Notes / General Case Note]: WAGGENER - ESP/FCC/PERSONAL NON-SMOKER I/M SEEN TO REV CUSTODY & HOUSING. HE IS MLU-AS & HAS BEEN SINCE 8-10-99 WHEN HE EXP HIS DS SANCTION FOR MJ-15, MJ-2, MJ-3, MJ-10 ETC, ETC. 11-21-97. LAST DISCIP G-14, 3-31-98. HE CLMS HE HAS COMPLETED ALL AVAIL PROGRAMS & PLANS TO CONTINUE HIS PROGRAMS IF GIVEN A CHANCE FOR GP. HE STATED HE IS TRYING TO STAY AWAY FRM ANY GANG PRBLMS. HE IS APPRVD FOR LEVEL 4 BUT WAS ADVISED HE SHOULD EXPECT TO GO SLOW. HE WAS GIVEN A 6 MONTH REV. D. NEVEN, B. KERR, Z. WAGGENER

02/10/2000 - 10:52 [Classification / Re-Classification (Per)]: MESSICK - ESP REGULAR REVIEW PERSONAL NONSMOKER RFS SECT A 12 DUE TO 11-21-97 GANG RELATED MAYHEM IN LEVEL 1 CLS GP. NOK VERIFIED. PED 9-1-2004.

Report Name: OAOIS

Reference Name: NOTIS-RPT-OR-0102.1

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State of Nevada
Department of Corrections
OFFENDER INFORMATION SUMMARY

NDOC ID: 23445

NAME: RAMIREZ, MIGUEL

- CASE NOTES -

RESTRICTED CASE NOTES HAVE BEEN REMOVED FROM THIS REPORT

CLAIMS HIS CASE IS IN COURT IN AN ATTEMPT FOR A SENTENCE REDUCCTION. LAST DISCP 3-31-98 G-14. RX REMAIN CLS NEEDS VERY RESTRICTIVE HOSUING DUE TO HIS PAST DISCP HISTORY AND GANG INVOLVEMENT. MESSICK DRAIN J DRAKE MHP 1049 02-11-2000 HUMPHREY

02/17/2000 - 02:24 [General Case Notes / General Case Note]: CHAMBLISS - ESP PERSONAL LETTER FROM THE LAW OFFICES OF RAWLINGS, OLSON, CANNON, GORMLEY & DESRUISSEAU WAS HAND DELIVERED TO I/M RAMIREZ THIS DATE. R. CHAMBLISS CCWS

08/11/2000 - 11:18 [Classification / Re-Classification (Per)]: MESSICK - ESP REGREV PERSONAL NONSMOKER RAMIREZ IS IN UNIT 5 LEVEL 4 SINCE 11-99. RFS SECT A 12 DUE TO MJ-15 OCCURRING IN UNIT 8 LEVEL 1 CLS GP OF ESP IN 11-97. CMC'S ESP UNIT 2/4/5. LAST DISCP 3-97 G14, LAST MJ 11-97. DENIES AFFILIATION WITH GANG; HOWEVER RAMIREZ ADMITS BEST GETS ALONG WITH MRU. WANTS TO BE ADVANCED TO UNIT 6 LEVEL 3 (A-WING). ADVISED NO RX FOR LEVEL ADVANCE WILL BE MADE UNTIL TALK TO OTHER STAFF. PED 9-1-2004 ON LAST SENTENCE. RX REMAIN CLS GP. MJ15 WAS GANG RELATED ASLT ON ANOTHER INMATE. MESSICK CHAMBLISS J DRAKE MHP 1407 08-14-2000 MILLER

08/23/2000 - 11:30 [General Case Notes / General Case Note]: MESSICK - ESP CASENOTE--RAMIREZ WAS REVIEWED WITH CERT SGT THOMPSON RE: **LEVEL ADVANCE AND ADVANCE WILL NOT BE CONSIDERED AT THIS TIME.** REVIEW AFTER STG COMPLETED.

01/31/2001 - 12:19 [General Case Notes / General Case Note]: DRAIN - SPECIAL PERSONAL I/M SEEN TO DISCUSS POSSIBLE ADVANCE FROM LEVEL 4 TO LEVEL 3 CLOSE I/M WANTS TO ADVANCE AND EXPECTS NO PROBLEMS IF MOVED TO 6A WING AS **HE STATES HE CAN LIVE WITH MRUS BEST HAS BEEN IDEED AS MRU** IN PAST VERBAL OK BY CERT SGT JONES RX TO FCC DRAIN PECK

02/01/2001 - 10:58 [General Case Notes / General Case Note]: DRAIN - FCC PERSONAL I/M SEEN FOR POSSIBLE RX TO AVANCE FROM LEVEL 4 TO LEVEL 3 I/M WANTS TO ADVANCE AND EXPECTS NO PROBLEMS. LAST NOC 11-00 G18 IS IDED AS MRU I/M STATES HE IS NOT AFFILIATED BUT LIVES WITH MRUS. CMTE AGREES TO RX TO WARDEN FOR CONSIDERATION OF ADVANCE IS CERT AND INST. INVESTIGATOR CLEAR, ENDEL DRAIN SGT RODRIGUEZ

02/05/2001 - 02:22 [Classification / Re-Classification (Per)]: DRAIN/C - PERSONAL RAMIREZ WAS RECENTLY MOVED FROM LEVEL 4 TO LEVEL 3 CLOSE CUST. RFS 12 SECA DUE **TO MJ 15 7-97 WHICH WAS GANG RELATED.** PED 9-04 I/M DENIES GANG INVOLVEMENT HAS BEEN IDED AS AN MRU RX REMAIN CLOSE HIGH RFS AND MRU DRAIN SGT RODRIGUEZ 1128 02-07-2001 MILLER

03/02/2001 - 02:00 [General Case Notes / General Case Note]: KERR - GIVEN PAROLE AND RELEASE INFO

08/09/2001 - 01:20 [Classification / Re-Classification (Per)]: "BOGOGER - ESP REG. REV. PERS. NON SMOKER RFS 12 SECT. A DUE TO MJ-15 ON 11-21-97. SERVING A 75 CC 75 YR. SENT. FOR KIDNAPPING I CC SEXUAL ASLT. DISCH A 10 & 6 YR. SENT FOR BURGLARY & CONSPIRACY, VIOLENT CRIME. PED 9-01-04. HOUSED AT ESP SINCE 7-28-99. CURRENTLY IN LEV.3 U-6 & UNAS. FISCAL O.K. DENIES GANG AFFIL. ID'ED "MRU". 3 LISTED CMC'S AT ESP (MILBOURN #23637, SAXEN #45874 & CHACON #49155). LAST NOC MJ-31 ON 11-30-00. NOK & SMOKING STATUS UPDATED. NO OTHER QUESTIONS, PROBLEMS, OR CONCERNS. M. DRAIN S. BOGOGER SGT. RODRIGUEZ 1453 08-10-2001 MILLER"

02/13/2002 - 12:40 [Classification / Re-Classification (Per)]: SHAULIS - ESP/REG REV/NONSMOKER/PERSONAL RAMIREZ APPEARED. I/M IS LEVEL 3, CLS. UNAS. RFS=12 ON **SEC A DUE TO MAYHEM @ESP, 11-21-97. ID AS MRU** AFFILIATION. SENT STRUCTURE INCLUDES KIDNAPPING AND SEXUAL ASSAULT. PED 9-01-04 ON KIDNAPPING; MPR 2/03/045. NOK VERIFIED. LAST NOC 11-30-00 FOR MJ 31. DISCUSSED SEX OFFENDER PROGRAMS. NO OTHER CONCERNS NOTED. SHAULIS DRAIN 1142 02-20-2002 MILLER

06/11/2002 - 11:31 [Grievance / Grievance]: -

06/24/2002 - 08:38 [Grievance / Grievance]: -

06/24/2002 - 08:40 [Grievance / Grievance]: -

07/08/2002 - 09:18 [Grievance / Grievance]: -

07/08/2002 - 09:19 [Grievance / Grievance]: -

07/12/2002 - 09:30 [Grievance / Grievance]: -

08/19/2002 - 03:43 [Grievance / Grievance]: -

08/26/2002 - 08:42 [Grievance / Grievance]: -

09/25/2002 - 10:36 [Grievance / Grievance]: -

09/26/2002 - 01:05 [Classification / Re-Classification (Per)]: SHAULIS - ESP/REGULAR REVIEW/NONSMOKER/PERSONAL

Report Name: OAOIS

Reference Name: NOTIS-RPT-OR-0102.1

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State of Nevada
Department of Corrections
OFFENDER INFORMATION SUMMARY

NDOC ID: 23445

NAME: RAMIREZ, MIGUEL

- CASE NOTES -

RESTRICTED CASE NOTES HAVE BEEN REMOVED FROM THIS REPORT

RAMIREZ APPEARED, I/M IS LEVEL 3, CLS. RFS=12 ON SEC A, DUE TO MJ15 11-21-97. ALSO AT CLS DUE TO MRU GANG AFFILIATION. SENTENCE STRUCTURE INCLUDES 75 YRS FOR KIDNAPPING CC SEX ASSAULT. LAST NOC 11-30-00 FOR MJ31. DISCUSSED SEX OFFENDER PROGRAMS, AND TOLD I/M TO KITE MHP ORDERS FOR INFORMATION ON CURRENT PROGRAMMING. NOK VERIFIED. DRAIN 1229 09-30-2002 SMITH

10/03/2002 - 02:16 [Grievance / Grievance]: -

10/03/2002 - 02:17 [Grievance / Grievance]: -

11/21/2002 - 09:58 [Grievance / Grievance]: -

12/11/2002 - 07:34 [Grievance / Grievance]: -

01/23/2003 - 11:35 [General Case Notes / General Case Note]: "SHAULIS - ESP/SPECIAL/STG RAMIREZ APPEARED. INMATE STATES HE HAS NEVER BEEN A GANG MEMBER. I/M STATES HE DOES NOT KNOW WHETHER HE CAN LIVE WITH SURENOS. HAS KNOW MEDINA ("GUMBY") AND GILBERT ESPINOZA SINCE 1982 @SDCC. NO GANG TATS NOTED. FOUND GUILTY OF MJ10, MJ3 FOR STABBING 11-2-97. STATES THE WEAPON WAS NOT HIS. STATES SOME PEOPLE STILL CALL HIM "CHICO." RAMIREZ WOULD LIKE TO BE TX TO LCC SO THAT HE CAN HAVE ACCESS TO PROGRAMMING FOR SEX OFFENDERS, AND STATES HE IS BEING DENIED ACCESS DUE TO IMPROPER GANG CLASSIFICATION. CMTE: SHAULIS, C/O D. GREGERSON."

01/28/2003 - 03:05 [Grievance / Grievance]: -

02/10/2003 - 01:32 [Classification / Re-Classification (Per)]: IRVIN - ESP/REG REV PERSONAL RAMIREZ APPEARED FOR HIS REG REV. SERVING 75 YRS FOR SEX ASSLT AND KID I. RFS 5 SEC A. LAST NOC 4-9-03 FOR MJ26. CMC'S @ ESP SAXEN #45874 AND CHACON #49155. CURRENTLY UNASS FROM EDUCATION. REQUESTING TO BE MOVED UP IN THE LEVEL SYSTEM. ADVISED THAT HIS GANG AFFILIATION PREVENTS HIM FROM DOING SO. RAMIREZ REQUESTED AN I-FILE REVIEW. ADVISED IT WILL TAKE SOME. HAS NO OTHER QUESTIONS OR CONCERNS. IRVIN C/O GREGERSEN 1532 02-11-2003 MILLER

02/14/2003 - 01:59 [Grievance / Grievance]: -

02/21/2003 - 11:44 [Grievance / Grievance]: -

03/10/2003 - 01:37 [Grievance / Grievance]: -

05/13/2003 - 11:52 [Grievance / Grievance]: -

06/06/2003 - 11:25 [Grievance / Grievance]: -

07/09/2003 - 10:50 [Grievance / Grievance]: -

07/21/2003 - 11:31 [Grievance / Grievance]: -

08/01/2003 - 01:49 [Grievance / Grievance]: -

08/26/2003 - 10:19 [Grievance / Grievance]: -

08/27/2003 - 02:18 [Classification / Re-Classification (Per)]: "IRVIN - ESP REG REV PERSONAL/SMOKER. RAMIREZ WAS SEEN FOR HIS 6 MONTH REV. CURRENTLY SERVING 75 YRS FOR KID I CC 75 FOR SEX ASSLT. PED: 9-1-04. RFS: 5 SEC A, 11 TOTAL. GANG: "OLD MRU". MONIKER: "CHICO". UNASS FROM EDUCATION. LAST OF 74 NOCS 6-16-02 G-3. RAMIREZ WANTED TO KNOW WHEN IS HE GOING TO HAVE A DUE PROCESS HEARING ON HIS STG VALIDATION. WAS ADVISED TO KITE MR. THOMPSON AND START THE DEBRIEFING PROCESS. DISCUSS HIS NEXT PAROLE HEARING. RAMIREZ WAS TOLD THAT HE NEEDS TO PASS THE PSYCH PANEL IN ORDER TO HAVE A GOOD CHANCE AT PAROLE. HE ASKED IF IT WAS POSSIBLE TO HAVE A BANK ACCOUNT ON THE STREETS TO SHOW THE PAROLE BOARD THAT HE CAN BE SELF PAROLED, WAS ADVISED THAT THE BOARD WANT HIS PSYCH PANEL APPROVAL NOT MONEY IN THE BANK. HE WANTED TO KNOW WHAT NEW PROGRAMING IS AVAILABLE FOR U-6 INMATES @ ESP. WAS ADVISED THAT THERE IS NOTHING NEW, ESPECIALLY FOR GANG MEMBERS. HIS ONLY CHANCE TO MOVE IS TO DEBRIEF AND GET APPROVED BY MR. THOMPSON. NO OTHER QUESTIONS OR CONCERNS. NO CHANGES MADE AT THIS TIME. IRVIN C/O J. PERKINS. 1134 08-29-2003 MILLER"

09/10/2003 - 02:10 [Grievance / Grievance]: -

09/10/2003 - 02:12 [Grievance / Grievance]: -

09/30/2003 - 09:42 [Grievance / Grievance]: -

10/13/2003 - 11:08 [Grievance / Grievance]: -

10/22/2003 - 04:57 [General Case Notes / General Case Note]: IRVIN - ESP SPECIAL REV PERSONAL. RAMIREZ WAS

Report Name: OAOIS

Reference Name: NOTIS-RPT-OR-0102.1

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State of Nevada
Department of Corrections
OFFENDER INFORMATION SUMMARY

NDOC ID: 23445

NAME: RAMIREZ, MIGUEL

- CASE NOTES -

RESTRICTED CASE NOTES HAVE BEEN REMOVED FROM THIS REPORT

SEEN TO REVIEW HIS I-FILE THIS DATE. HE HAD 1 HOUR AND 15 MIN. RAMIREZ TOOK NOTES ON THE DATES AND PLACES OF HIS WORK ASSNMENTS. HE WAS LOOKING FOR INFO REGARDING HIS STG. RAMIREZ WAS ADVISED HE NEEDS TO KITE MR. THOMPSON AND REQUEST THAT INFO. NO CHANGES MADE. IRVIN, C/O MILLER.

10/23/2003 - 10:30 [Grievance / Grievance]: -

11/13/2003 - 01:43 [Grievance / Grievance]: -

11/13/2003 - 01:44 [Grievance / Grievance]: -

12/08/2003 - 02:25 [Grievance / Grievance]: -

01/02/2004 - 10:46 [Grievance / Grievance]: -

02/09/2004 - 10:19 [Grievance / Grievance]: -

02/10/2004 - 10:24 [Classification / Re-Classification (Per)]: "IRVIN - ESP/REG REV/PERSONAL/NON-SMOKER. RAMIREZ WAS SEEN FOR REV OF RECORDS. SERVING 75 YRS FOR KID I AND SEX ASSLT. PED 9-1-04. RFS 6 TOTAL. CMCS: MILBURN #23637, SAXEN #45874 AND CHACON #49155. LAST OF 74 NOCS G-3 AND G-14 (D) ON 6-16-02. GANG: "MRU" MONIKER "CHICO". UNAS FROM EDUCATION. NO OTHER PROGRAMING NOTED. NOK AND NON-SMOKER VERIFIED. NO CHANGES MADE. IRVIN C/OT PERKINS 1253 02-12-2004 MILLER"

02/11/2004 - 11:56 [Grievance / Grievance]: -

03/05/2004 - 10:58 [Grievance / Grievance]: -

03/05/2004 - 11:01 [Grievance / Grievance]: -

03/24/2004 - 02:48 [General Case Notes / General Case Note]: CORDA - SUBJECT APPEARED AT PSYCH PANEL HEARING VIA VIDEO CONFERENCE THIS DATE. FAILED. RX CONTINUE WITH S.O. PROGRAMMING AND BE MORE SERIOUS ABOUT IT.

04/16/2004 - 08:47 [Grievance / Grievance]: -

05/03/2004 - 01:47 [Grievance / Grievance]: -

05/07/2004 - 03:56 [General Case Notes / General Case Note]: OXBORROW - ESP/PAROLE-BOARD/NONPERS- I/M NOT SEEN AT REQUEST OF PAROLE BOARD MEMBERS DUE TO HIS FAILURE AT THE PSYCH PANEL BISBEE, MORROW, GOODSON

05/17/2004 - 03:14 [General Case Notes / General Case Note]: IRVIN - ESP PAROLE RESULTS RAMIREZ WAS INFORMED THAT: IT IS THE ORDER OF THE BOARD THAT FURTHER CONSIDERATION OF PAROLE IS DENIED UNTIL : 9-1-09.

08/10/2004 - 12:51 [Classification / Re-Classification (Per)]: "IRVIN - ESP/REG REV/NON-PERSONAL. RAMIREZ WAS SCHEDULED FOR REV OF RCORDS BUT DECLINED TO APPEAR PER UNIT STAFF. SERVING HIS 3RD DENTENCE OF 75 YRS FOR KID 1 AND SEX ASSLT. RFS 6 TOTAL. CMCS: MILBURN #23637 @ ESP, SAXEN #45874 @ ESP AND CHACON #49155 DISCH. LAST OF 74 NOCS 6-16-02 FOR A G-3. GANG: "OLD MRU" MONIKER: "CHICO", VALIDATED BY SWANN ON 2-26-03. CURRENTLY UNAS FROM EDUCATION. NO OTHER PROGRAM NOTED. UNABLE TO VERIFIED NOK OR SMOKER STATUS. IRVIN SC/O ORILLO 0817 08-11-2004 MILLER"

02/08/2005 - 01:22 [Classification / Re-Classification (Per)]: "SHAULIS - ESP/REGULAR REVIEW/NONSMOKER/PERSONAL RAMIREZ APPEARED FOR RECORDS REVIEW. I/M IS CLS-GP, LEVEL 3 (U5). RFS=11. RAMIREZ HAS NOT BEEN ABLE TO ADVANCE DUE TO STG: LISTED AS OLD MRU SUSPECT. PED 9-01-09 ON 75 YRS FOR SEC ASSLT. RAMIREZ STATED "I'M NOT A GANG MEMBER. THE STG PROCESS IS IRRATIONAL. YOU HAVE NOT PROVIDED ME WITH EVIDENCE; THERE MUST BE 3 INDEPENDENT SOURCES. I'M PUERTO RICAN. I WAS ACQUAINTED WITH THEM [MRU] FOR 20 YEARS, BUT NOT AN ASSOCIATE. THE STG WAS USED AGAINST ME IN THE PSYCH PANEL." INFORMATION WILL BE FORWARDED TO IG PAM DELPORTO. CCWS ADVISED I/M TO WRITE TO THE IG ABOUT STG. RAMIREZ STATED HE COULD NOT GO TO GP @NSP OR HDSP, BUT WOULD ACCEPT PLACEMENT IN A SPECIAL PROGRAM @NSP, LIKE THE ONE THAT FELL THROUGH. RAMIREZ HAS COMPLETED RELAPSE PREVENTION (SEX OFFENDER) PROGRAM CELL STUDY AND SAYS HE WILL TAKE IT AGAIN. SMOKING STATUS AND NOK UPDATED. SHAULIS BLAKE 1110 02-09-2005 MILLER"

07/06/2005 - 10:52 [General Case Notes / General Case Note]: SHAULIS - ESP/CASENOTES/NONPERSONAL RAMIREZ WROTE A KITE TO CCWS ON 6-15-05 COMPLAINING LAW LIBRARY SUPERVISOR D. LIGHTSEY HAD NOT LOGGED A CASE FOR HIM. C/O BAHLIS IN LAW LIBRARY STATES HE LOGGED THE ITEM ON 6-16-05. WHEN INMATE RAMIREZ BROUGHT UP THE ISSUE ON 7-5-05, HE DID NOT SAY THE PROBLEM, IN ALL PRACTICAL SENSE, HAD BEEN SETTLED. THIS ENTRY IS MADE TO ILLUSTRATE RAMIREZ' PATTERN OF DIFFICULTY TOWARD STAFF.

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08/02/2005 - 03:50 [General Case Notes / General Case Note]: IRVIN - ESP/EXIT... RAMIREZ IS CLR TO TX TO NSP ON 8-3-05 FOR OTC ON 8-8-05. CURRENTLU HOUSED CLS-GP IN UNIT 5. NO CMCS @ NSP. GANG: "OLD MRU" MONIKER: "CHICO" VALIDATED BY SWANN SINCE 2-26-03. NO P&P AGENDA PENDING. LAST PHYSICAL 9-10-03 NO RESTRICTIONS NOTED. NO DISCIPLINARY OR COURT ACTION PENDING IN WHITE PINE CO.*

08/12/2005 - 05:36 [General Case Notes / General Case Note]: ZAPPETTINI - RETURNED FROM OTC. CLAIMS CASE NOT COMPLETE. I/M IS ESP/CLOSE CUSTODY I/M @ NSP FOR CRT & RTN. MOVE BACK TO UNIT 12B. CLAIMS NO ENEMIES, BUT WILL BE SEEN BY CCS FOR YARD CLEARANCE. CMTE: BACA, ZAP.

08/16/2005 - 07:00 [General Case Notes / General Case Note]: WALSH - NSP: HAND DELIVERED MINUTES OF THE COURT FROM US DISTRICT COURT ON 8-15-05 AT 4:30 PM. COPY IN I-FILE.

08/16/2005 - 03:12 [General Case Notes / Due Process]: TRUSHENSKI - NSP: WAIVED DUE PROCESS HEARING. IS AN ESP CLOSE CUSTODY INMATE HERE FOR C&R. WENT OUT TO COURT ON 8-8-05 & RETURNED 8-12-05. REC'D PROPERTY TODAY. STATED HE HAS A HEARING PROBLEM. CLAIMS NO ENEMIES ON THE TIER, CLEARED FOR EXERCISE YARD. IS OLD MRU. NO HISPANICS ON THE TIER EXCEPT 1 LCC NORTENO. HAS TELE CONFERENCE TOMORROW. HABBERFIELD, CARDELLA, JT

08/17/2005 - 08:56 [General Case Notes / General Case Note]: DONAT - I/M TO REMAIN AT NSP FOR THE PRESENT TIME. HE HAS AN APPT TO OBTAIN A HEARING AID.

08/17/2005 - 09:33 [General Case Notes / General Case Note]: TRUSHENSKI - NSP: HAD TELE-CONFERENCE W/JUDGE & SUSAN E. LEE, DEPUTY ATTORNEY GENERAL THIS DATE.

09/12/2005 - 05:27 [General Case Notes / General Case Note]: ZAPPETTINI - I/M SERVED W/STG DUE PROCESS NOTICE OF HEARING 9/15/05 @ 1:00PM. IG ADVISED.

09/15/2005 - 01:52 [General Case Notes / General Case Note]: BACA - 9-15-05 CONDUCTED A STG/DS DUE PROCESS HEARING ON INMATE RAMERIZ. PRESENT FOR THE HEARING WAS COMMITTEE MEMBERS, JAMES BACA-AWP, SHELL ZAPPETTINI CCSIII, SCO SHEPARD-NSP INVESTIGATOR. PRESENT FROM THE IG OFFICE WAS PAM DELPORTO. ALSO PRESENT WAS INMATE RAMERIZ. THE STATE CASE WAS PRESENTED AND WHEN RAMERIZ WAS PROVIDED HIS OPPORTUNITY TO PRESENT HIS CASE, HE STATED HE WAS NOT PROVIDED A COPY OF AR 446 IDENTIFICATION AND MANAGEMENT OF SECURITY THREAT GROUPS WITH AN EFFECTIVE DATE OF 8-22-05. I DISCONTINUED THE HEARING AND WILL PROVIDE A COPY TO INMATE RAMERIZ OF AR 446 TODAY. THIS WILL BE DOCUMENTED INTO THE NCIS CHRONO RECORD ONCE PROVIDED BY HIS CASEWORKER. THE HEARING WILL BE RE-SCHEDULE ONCE IG DELPORTO RETURNS FROM TRAINING IN LATE SEPTEMBER OF 2005. AWP BACA

09/15/2005 - 03:04 [General Case Notes / General Case Note]: TRUSHENSKI - SERVED I/M WITH AR#446 PER REQUEST DURING INITIAL STG AD/SEG HEARING.

09/21/2005 - 03:10 [Classification / Re-Classification (Per)]: TRUSHENSKI - NSP REG REV, PERSONAL: RFS=9 IS SERVING 75 CC 75 YRS FOR KIDNAPPING I CC SEXUAL ASSAULT. PED 9-1-09, MPR 10-11-45, EXP 5-22-46. DISCHARGED OTHER CASES. IS AN ESP PS INMATE HERE FOR COURT PURPOSES. STG: OLD MRU SUSPECT, MONIKER CHICO. STATED HLTH ALRIGHT BUT STILL HAS NOT GOTTEN HEARING DEVICE, CAN READ LIPS & HAS SOME HEARING. NON-SMOKER. LAST DISCIP A M3 IN 10-04, NONE PEND. HAS 2 SEPARATEES AT NSP: MILBOURN 23637 & SAXEN 45874. CLAIMS NO PROBLEMS ON THE TIER. NOK SAME. HAS LEGAL CASES PENDING. IS UNASSIGNED. TRUSHENSKI ANITA 0930 09-26-2005 FROSCHAUER I/M TO REMAIN APPROVED FOR ESP/PS AS ESP/C&R I/M.

09/30/2005 - 02:34 [General Case Notes / General Case Note]: BACA - 9-30-05 SUBJECT APPEARED AT HIS STG/DG DUE PROCESS HEARING. PANEL MEMBERS WERE JAMES BACA-AWP, LISA WALSH CCSI, SCO SHEPARD. STATE CASE WAS PRESENTED BY IG PAM DELPORTO, IG ROD MOORE (TRAINING PURPOSES ONLY). INMATE RAMIREZ WAS PRESENT. THE PANEL AFFIRMED THE IG OFFICE REPRESENTATION THAT RAMIREZ WAS A SUSPECT MEMBER OF THE MRU. INMATE INFORMED OF HIS APPEAL RIGHTS. INMATE BEING DELIVERED TODAY DOC FORM 1598 AND DOC 1599 FOR HIS COPIES.

09/30/2005 - 03:29 [General Case Notes / General Case Note]: TRUSHENSKI - NSP PERSONAL: GIVEN STG DUE PROCESS HEARING RESULTS FORMS NDOC 1599 & 1598 THIS DATE. ORTIZ, JT

10/12/2005 - 04:38 [General Case Notes / General Case Note]: ZAPPETTINI - I/M GIVEN COPY OF FORM NDOC #1598 FORM IG STG DESIGNATION FROM IG DELPORTO NOTING DATE ON FORM S/B 9/8/05. COPY TO I-FILE.

10/20/2005 - 01:56 [General Case Notes / General Case Note]: TRUSHENSKI - NSP PERSONAL: SEEN HIM AS HE HAD SENT ME A KITE FOR A BRASS SLIP. LAW SUPERVISER TOOK CARE OF IT. STATED HE HAD HIS HEARING AID, WANTED TO KNOW WHEN HE WOULD GO TO HIS STG APPEAL HEARING. DID NOT KNOW. STATED HE WAS DOING ALRIGHT. ROGERS, JT

10/26/2005 - 03:09 [General Case Notes / General Case Note]: BACA - 10-26-05 FAXED TO DDO COX SUBJECT STG DUE

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PROCESS APPEAL THIS DATE. SUBJECT WAS CONTACTED TO PROVIDE COPY SINCE THERE WAS NO RECEIPT OF THE ONE SUBJECT SENT TO DDO COX. RETAINED ONE IN INMATES I-FILE FOR THE RECORD. AWP BACA

11/02/2005 - 07:56 [General Case Notes / General Case Note]: GRAFTON - ON 11-1-05 I INFORMED HIM DDO COX HAD UPHELD THE DUE PROCESS CMTE'S DECISION RE: HIS STG STATUS. HE ASKED FOR WRITTEN REPORT OF THAT AND I TOLD HIM I DID NOT HAVE ONE AND THERE WAS NO PROVISION IN A.R. FOR ONE. ADVISED HIM HE HAD EXHAUSTED HIS ADMINISTRATIVE REMEDIES ON THE ISSUE.

11/02/2005 - 03:39 [Classification / Re-Classification (Change)]: GRAFTON/C - PERSONAL REVIEW: RFS 4, NO MIN/S.O. TFR. TX HDSP PER AWP BACA, I.G. DEL PORTO. IS IN AD-SEG AT NSP AFTER DUE PROCESS HRNG WHICH CONFIRMED STG VALIDATION (MRU). HAS CMS AT NSP. NO DETAINER. MORE THAN 1 YR DISC FREE. NO MEDICAL RESTRICTIONS OR COMPLAINTS. USES HEARING AID. NOK SAME, SMOKER. NO GHP, CASA GRANDE, OASIS, WINGS/TFR. PED 9-1-09 EXP 6-2-46 GRAFTON BACA DEL PORTO 0959 11-03-2005 FROSCHAUER OK HDSP/CLOSE - CONFIRMED W/ P.DELPORTO THAT MRU AFFILIATES WILL HAVE PROBLEMS IN GP.

11/03/2005 - 01:27 [General Case Notes / General Case Note]: GRAFTON - GAVE HIM TYPED RESPONSE FROM I.G. DEL PORTO DATED 11-2-05.

11/03/2005 - 03:19 [General Case Notes / General Case Note]: GRAFTON - AD-SEG REVIEW: TOLD HIM HE HAD BEEN SUBMITTED FOR TX TO HDSP. HE HAD NO OTHER CONCERNS. GRAFTON, EVANS, JEFFERS

11/21/2005 - 02:56 [General Case Notes / General Case Note]: TRUSHENSKI - NSP REV: SEEN 11-18-05. IS REQUESTING COPIES OF HIS MEDICAL TRANSCRIPTS CONCERNING HIS EARS. TOLD HIM I WAS NOT SURE HE COULD GET COPIES. TOLD HIM OF IMPENDING TX SOUTH. SCHOBEL, JT

11/22/2005 - 08:21 [General Case Notes / General Case Note]: GERKE - I/M REC FROM NSP ON 11-21-05. MRU SUSPECT. I/M STATES NO KNOWN ENEMIES, NO MED REST, NON-SMOKER. EXPLAINED TO I/M THAT DUE TO AN ASSAULT ON MRU'S A FEW WEEKS AGO, HE WILL BE HOUSED IN AD-SEG AS INVOLUNTARY P/C WHILE THE INVESTIGATION IS STILL PENDING.

11/30/2005 - 02:59 [General Case Notes / Due Process]: CHURCH - DUE PROCESS/PERSONAL. INITIAL HEARING. I/M ADVISED OF HIS RIGHTS, WAIVED COUNSEL/STAFF ASSIST, NO DOCUMENTS OR WITNESSES. NO DOC 2003 AVAILABLE. I/M PLACED HDSP/ADSEG INVOLUNTARY PS DUE TO VALIDATION AS MRU. I/M CLAIMS NO ENEMIES OR PROBLEMS HDSP/ADSEG. COMMITTEE RX I/M REMAIN HDSP/ADSEG PEND RESOLUTION OF MRU ISSUE. CCSII CHURCH, C/O ASHCRAFT

04/28/2006 - 11:29 [General Case Notes / General Case Note]: GERKE - AD-SEG REVIEW, LATE ENTRY (REVIEWED ON 4-18-06). I/M STATES SOME PROBLEMS, BUT NO ENEMIES IN HDSP AD-SEG. I/M STATED THAT HE HAS BEEN HAVING PROBLEMS GETTING LAW CLERK LATELY, EXPLAINED TO I/M THAT THERE HAVE BEEN STAFF CHANGES IN THE LAW LIBRARY AND NEW STAFF IS BEING TRAINED AND TO LET ME KNOW IF THERE ARE STILL PROBLEMS IN ANOTHER WEEK OR SO. GAVE I/M SEVERAL GRIEVANCE RESPONSES TO SIGN. I/M ASKED IF THERE WAS ANY CHANGE TO THEIR SITUATION (THE MRU'S) AND I TOLD I/M I WAS NOT AWARE OF ANYTHING YET, JUST THAT A SOLUTION WAS BEING WORKED ON. NEXT REVIEW 5-18-06.

05/17/2006 - 03:30 [Classification / Re-Classification (Per)]: CHURCH - REG REV/PERSONAL. REF=12, NO CHANGE TO NOK, NON-SMOKER, CLS/NO MIN CS SEX ASSAULT I/O, NO MED/DENT/MENT HEALTH RESTRICTIONS, G1 03/16/06, NO HOLDS. CLARK CO COMMIT SERVING 75 YRS KIDNAPPING 1ST CC 75 YRS SEXUAL ASSAULT, PED 09/01/09, MPR 12/02/45, EXP 07/13/46. REGULAR VISITS, CMS @23637 & #45874 @LCC, VALIDATED MRU, CATHOLIC, ENGLISH PRIMARY LANGUAGE. CURRENTLY HOUSED HDSP/ADSEG DUE TO SEPARATION CONCERNS. CHURCH MARSHALL

1243 05-30-2006 SMITH

05/26/2006 - 11:44 [Classification / Re-Classification (Change)]: WILLIS - HDSP NON PERSONAL FCC - RAMIREZ REVIEWED FOR TX TO LCC MEDIUM GP ON HDSP MRU DEPOP. IS VALIDATED MRU. RFS 12 TOTAL. LAST OF 6 (OF 76 TOTAL) NOCS WAS A G1 ON 3/13/06. HAS 2 CMCS AT LCC, BOTH INMATES ARE CLOSE PROTEC. SEG INMATES, RICHARD MILBOURN 23637 AND GARY SAXEN 45874. MAY NOT BE PROBLEMATIC FROM A CUSTODIAL HANDLING POINT OF VIEW, BUT INMATE IS VERY LITIGIOUS. PER IG COORD. PAM DELPORTO, OK TO TX AS LCC MED. MRU POPULATION WILL HAVE THEIR OWN SEPARATE PROGRAM AREA THAT IS STILL MEDIUM GP. PED 9/1/09 ON 75 YR. SENT, FOR KIDNAPPING I. RX CLEAR FOR TX TO LCC MEDIUM GP ON MRU DEPOP FROM HDSP. AWP WILLIS

1020 05-30-2006 BYRNE OK LCC/MED/UNIT 9. STG: MRU.

06/07/2006 - 12:02 [General Case Notes / Due Process]: HARKREADER/C - INMATE APPEARED FOR DUE PROCESS ON 6-6-06. AFTER BEING ADVISED OF HIS RIGHTS AND STATING THAT HE UNDERSTOOD, HE WAS ADVISED THAT HE WAS PENDING AN MJ-26 VIOLATION FOR HAVING A PRISON MADE WEAPON IN HIS POSSESSION. HE WAS ALSO ASKED ABOUT THE ALTERCATION WITH AWP LEGRAND WHEN HE HAD ARRIVED. HE STATES THAT HE WAS BEING SMART AND MADE A REMARK ABOUT BEING PART OF AL QAIDA. HE CONTINUED UNTIL HE WAS PLACED INTO

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AD/SEG. WHILE HIS PROPERTY WAS BEING INVENTORIED **A PRISON MADE WEAPON WAS FOUND**. PER THE ACTING AWO, HE IS TO HAVE NO YARD WITH OTHER INMATES. HE IS ALSO TO BE **SUBMITTED FOR TRANSFER AS SOON AS HIS HEARING IS COMPLETED**. AD/SEG/WA NEXT REVIEW 6-13-06. HARKREADER - SC/O WALLASTER - C/O CRASPAY

08/15/2006 - 12:26 [General Case Notes / General Case Note]: HARKREADER - DISCUSSED EXTREME WALK ALONE WITH AWO HALSTEAD. CURRENTLY, INMATE COULD ONLY BE ON THE YARD IF THERE WERE TWO CAGES BETWEEN. IT COULD ONLY BE FACILITATED ONCE A WEEK. RAMIREZ HAS BEEN DOWN GRADED TO WALK ALONE. PER AWO SO HE CAN GO OUT WITH ONE EMPTY CAGE IN BETWEEN BY AWO.

08/17/2006 - 02:24 [Classification / Re-Classification (Change)]: HARKREADER - INMATE REVIEWED FOR EXCHANGE AT ESP. INMATE WAS TX TO LCC FOR THE MRU UNIT. DURING INTAKE HE **BECAME VERBALLY ABUSIVE WITH THE AWP AND WAS PLACED INTO AD/SEG**. WHILE INVENTORIED HIS PROPERTY AN ALTERED PEN WAS **DISCOVERED AND ESTABLISHED AS A PRISON MADE WEAPON**. HE IS SERVING D/S UNTIL 10-06. WOULD **RECOMMEND SUSPEND UPON TX AND EXCHANGE HIM FOR INMATE REVAL #23061 FOR THE MRU UNIT PER P. DEL PORTO** HARKREADER SC/O VALLASTER C/O CRASPAY 0829 08-22-2006 BYRNE OK CLOSE/ESP. FAILED MRU UNIT AT LCC.

08/28/2006 - 09:53 [General Case Notes / General Case Note]: HERRERA - **I/M IS BEING TX TO ESP DUE TO FAILING MRU UNIT AT LCC**. SEE PREVIOUS CHRONO. HE WAS **VERBALLY ABUSIVE TO AWP LEGRAND AND HAD A PRISON MADE WEAPON IN HIS PROPERTY**. **WILL EXCHANGE MRU FROM ESP FOR INMATE RAMIREZ AT LCC**. INMATE HAS TO SEPARATEES AT LCC. SEE PREVIOUS CHRONO.

08/29/2006 - 08:54 [General Case Notes / General Case Note]: DRAIN - ESP INTAKE PERSONAL NON SMOKER I/M ARRIVED FROM LCC FOR CLS GP HOUSING **WAS ESP IN PAST TXED 8-05 RETURNED TO ESP DISC HISTORY AND ATTITUDE TOWARD STAFF** LCC I/M STATES HE DID NOT TALK TO IG DELPORTO AND THIS UPSET THEM. LISTED OLD MRU SAYS HE IS RETIRED FROM THE GANG. UNDERSTANDS ESP OPERATION ADVISED SINGLES CELLS ARE NO LONGER IN GP UNITS WILL FIND CELLMATE. DRAIN LT JONES MEDICAL STAFF

11/28/2006 - 12:58 [General Case Notes / General Case Note]: WEISS - ESP/FCC. RAMIREZ PRESENT FOR FCC REVIEW RE HIS CONCERNS. **I/M FEELS HE SHOULD HAVE HIS DISCIPLINARY FROM LCC OVERTURNED DUE TO TIME FRAMES (PRISON-MADE WEAPON)**. I/M ALSO EXPRESSED HIS NEED FOR STG REVIEW. PER AWP WILL REVIEW ON 12-28-06 PENDG IG REVIEW. CHRONOS INDICATE LCC MRU UNIT FAILURE. I/M CLAIMS IG TX HIM TO ESP.

01/22/2007 - 03:30 [General Case Notes / General Case Note]: WEISS - ESP/FCC REVIEW. RAMIREZ PRESENT TO REQUEST HOUSING REVIEW. DISCIP MJ26 DISMISSED FROM LCC VIA GRIEVANCE APPEAL PROCESS. **REQUESTS RETURN TO LCC**. AWP ADVISED WILL REVIEW. CMTE: AWP ENDEL, WEISS, SC/O SEDLACEK.

01/26/2007 - 11:01 [Classification / Re-Classification (Change)]: "WEISS - ESP/FCC/CHANGE REVIEW. RAMIREZ PRESENT FOR CHANGE REVIEW. RFS=10; *AWP ENDEL CONFERRED W/AWP LEGRAND LCC. **CMC LCC #23637 & 45874 (PS STATUS)**. NO DETAINERS NOTED. STG: OLD MRU SUSP "CHICO" VALID 2-03. 77 NOC; LAST MJ26 6-1-06 LCC DISMISSED VIA DISCIPLINARY APPEAL PROCESS. SERVING 75 YR CC 75 FOR KIDNAP I/SEXUAL ASSLT. PED 9-1-09. NO HEALTH RESTRICTIONS. RAMIREZ GOAL TO UTILIZE LCC PROGRAMS. FCC RX LCC/MED/MRU. AWP ENDEL WEISS 1022 01-31-2007 BYRNE DENY TX/FAILED MRU UNIT."

02/22/2007 - 10:01 [Classification / Re-Classification (Per)]: WEISS - ESP/PERIODIC/NON-SMOKER. RAMIREZ PRESENT FOR REVIEW. RFS=10; **DENIED TX MED LCC 1-07 DUE TO FAILURE MRU UNIT**. CMS LCC-PS X2. NO DETAINERS NOTED. 77 NOC LAST MJ26 LCC DISMISSED. STG: OLD MRU SUSPECT 2-03. NO MED RESTRICTIONS. SERV 75 YRS KIDNAP/SEX ASSLT PED 9-1-09. ADVISED OF TX DENIAL. CLAIMS B/C & SS CARD. NOK/SMOKING VERIFIED. WEISS SC/O SEDLACEK 1534 02-27-2007 SUWE

04/19/2007 - 02:47 [General Case Notes / General Case Note]: WEISS - ESP/CASENOTES. RAMIREZ RECEIVED I-FILE REVIEW THIS DATE. REQUESTED HEARING RE TIER LEVEL OF S/O; NOTIFICATION. ADVISED WILL RESEARCH W AWP ENDEL, WEISS, C/O ROSS.

03/31/2008 - 11:50 [Classification / Re-Classification (Per)]: ESP/ FCC/ REG REV.....

Ramirez was seen for rev of records. Currently house Cls-Gp L3, Serving 75 yrs cc 75 yrs for Kid 1 and Sex Asslt. RFS 9 (Med). CMCs= #23637 and #45874 @ LCC. No Med or MH restrictions. STG: "Old MRU" Moniker: "Chico". Last NOC MJ26 (D) 6-1-06 (poss of altered Bic pen). Arrived @ ESP from LCC on 8-29-06 due to ESP Disc Hx and Attitud towards staff.

Ramires asked why he wasn't seen for any review in the past 18 months. He was informed that during the transition to the new system some inmates did not changed to the new system and now he will be scheduled regularly. Discussed possibility of transfer, AWP responded that he needed to discussed his request with OMD. No other questions or concerns at this time. The AWP stated that he will be in touch with Ramirez after contacting OMD. No changes at this time. ...[CWILLIS updated the case note on 04/04/2008 14:26:12] Ok ESP - difficult housing due to "Old MRU" status, housed elsewhere with problems.

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Discussion with OMD for possible future lesser custody consideration.

09/22/2008 - 03:36 [Classification / Re-Classification (Per)]: ESP REG REV.....

Ramirez was seen for rev of records. Currently housed Cls-Gp L3. Serving 75 yrs for Kid 1 CC 75 yrs for Sex Asslt. RFS 9 (med) CMC's Milbourn #23637 @ LCC and Saxon #45874 @ LCC. NO Med or MH restrictions noted. Last NOC 6-1-06 MJ26 (D). STG: "OLD MRU" Moniker "Chico". Arrived @ ESP from LCC on 8-29-06 due to Disc Hx and attitud toward staff. Unass from education or programing. NOK and NonSmoker verified. I/m claims he completed his GED while incarcerated. Drug of choice = Alcohol, heroin, marijuana and was a serious abuse. NO Holds or Detainers noted. NO Military Service. No SS card or BC on file, I/m was advised to have his family send a copy of his BC and SS card to update his files. Discussed parole plan, I/m stated he wants a debriefing, was advised will be scheduled soon. No other questions or concerns. No changes made. ...[CWILLIS updated the case note on 09/29/2008 14:35:11] Ok ESP.

11/13/2008 - 12:50 [General Case Notes / General Case Note]: ESP PAROLE RESULTS.....

Ramirez was informed that: No action was taken on the above referenced inmate at the parole board hearing held this date 10-27-08.

Reason for no Action: Panel wants results of Psych Panel before seeing the inmate. Note: Inmate failed Psych Panel last time. Psych Panel Scheduled for 11-17-08. Reschedule Parole hearing after 11-17-08.

03/12/2009 - 03:02 [General Case Notes / General Case Note]: ESP PAROLE BOARD HEARING.....

Ramirez was seen by the Northern Board, Commissioners Bisbee, Baker and Jackson present. Seen for his Kid and Sex Asslt case of 75 yrs out of Clark Co. PED = 9-1-07. Received Psych Panel Rev and was noted he is not high risk to reoffend. Risk Assmt = High, 46 yrs old. STG validation. Has GED and HSD. No major disc hx in the last 3 yrs. Cls custody. First arrest @ 15. Has parole/probation violations and it was noted that he committed the current crime while on probation. Was employed at the time of the crime. Has a significant substance abuse hx. Board noted I/m's letters to them and his sex offender programs. I/m claims lack of programs @ ESP. Discussed crime in detail and claims he was under the influence of alcohol at the time of the crime. I/m claims remorse for his victim. Parole Plan is to live with his mother in Las Vegas and claims work upon release with his brother-in-law in his landscaping business. Plans to address his substance abuse issues by attending AA/NA programs, claims 20 yrs sober and he has changed and is willing to do what the Board instruct him to do. Discussed his lengthy juvenile criminal hx in detail and it will be taken in consideration Results will follow in 3-4 weeks.

Irvin, C/O Remington.

03/23/2009 - 04:41 [General Case Notes / General Case Note]: ESP PAROLE BOARD RESULTS.....

Ramirez was informed that: It is the order of the Board that further consideration of parole is DENIED until 9-1-10. Copy of order given to inmate.

04/01/2009 - 04:12 [Classification / Re-Classification (Per)]: ESP REG REV..... (Late entry)

Ramirez was seen for rev of records. Currently housed Cls-Gp L3. Serving 75 yrs for Sex Asslt CC 75 yrs for Kid 1. RFS - 9 (med). CMC = #23637 @ ESP #45874 @ LCC. No Med or MH restriction. Last NOC = 6-1-06 MJ26 (D). STG = "MRU" Moniker = "Chico". NOK and non-smoker verified. Has GED and HSD and is currently unass from education/programing. DOC - alcohol, heroin and marijuana. No military service, No Holds or detainers. I/m requested an I-File review and was informed that will be done as soon as I could find some time free. I/m requested to have his STG removed, was explained that that procedure will be done by Central Classification. I/m stated he want the last NOC expunged from the record, was advised that is not possible. I/m requested an STG hearing every 4 months, I/m was advised that he could kite Sgt Bryant for more input

on that issue, also he is more than welcome to kite IG's office Pam Del Porto for an update on his case.

I/m stated he wants a transfer, was informed that is not possible at this time, that he had failed med placement

I/m stated it did not matter due to the fact that a suit is in the process against ESP Staff. No other questions or concerns. No changes made.

04/06/2009 - 10:18 [Sentence Management / Sentence Management]: Confirmed with NCIS - entered a 5 year minimum, so the PED would be correct and the Parole Board could make their entries.

SAFE RECP.

U.S. DISTRICT COURT
DISTRICT OF NEVADA
ENTERED & SERVED
JUL - 6 2005
CLERK, U.S. DISTRICT COURT
DEPUTY

FILED

05 JUL -6 PM 3:18

LARRY S. WILSON
CLERK
BY: [Signature]
DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MIGUEL RAMERIZ,

Plaintiff,

vs.

KENNY GUINN, et al.,

Defendant(s).

CV-N-02-0469-HDM (VPC)

REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE

This Report and Recommendation is made to the Honorable Howard D. McKibben, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR IB 1-4.

Before the court is defendants' motion for summary judgment (#142).¹ Plaintiff opposed (#159, 163), and defendants replied (#168).² The court has thoroughly reviewed the parties' pleadings and

¹Defendants also provided documents for *in camera* review based on security reasons (#144).

²In plaintiff's index and exhibits filed in opposition to defendants' motion for summary judgment (#159), he failed to provide defendants with copies of Exhibits F, H, J, L, N, Q, S, U & V, which are discovery responses from defendants McDaniels, Neven, Endel, Shaulis, Irvin, Swann, Conmay, Crawford, and Slansky, respectively (#168, attached aff. of Daniel Wong). The court presumes that plaintiff failed to provide copies of these exhibits because he assumed defendants retained copies of their discovery responses and because plaintiff has exceeded his copying allotment. Fed.R.Civ.P. 5(a) requires parties to serve opposing counsel with all papers filed with the court, and there is no exception made for parties appearing *in pro se*. Given the exigencies of this proceeding and the fact that the omitted exhibits are defendants' discovery responses, the court will not strike plaintiff's exhibits (#159) in their entirety. However, plaintiff is strongly admonished that if he fails to serve complete copies of papers filed with this court in the future, including exhibits, they will be stricken, *sua sponte*, without leave to refile them.

174

EXHIBIT- A

The June 2004 version of A.R. 446 includes the same procedure for identification and management of STGs, but adds the following amendment:

446.02 Review and/or Removal of Security Threat Group Designation

1.1 During regular reviews casework staff will confirm with the inmate any validated Security Threat Group (STG) designation.

1.1.1 Inmates who express an interest in debriefing and having the STG designation removed will be referred to a Full Classification Committee within the institution.

1.1.2 If the Full Classification Committee recommends debriefing, the case will be referred in writing to the Offender Management Administrator for review.

- The debriefing will be made by an investigator assigned by the Inspector General.

- The Inspector General will review the investigator's recommendation with the Offender Management Administrator.

1.1.3 The Inspector General will advise the appropriate investigator if the designation is to be removed with the NCIS.

1.1.4 The Offender Management Administrator will notify the Warden of the institution of the decision.

- The Warden will facilitate classification as appropriate.

- The safety of the inmates must be of primary concern if they are to be reviewed for transfer or a change in custody.

(#142, A.R. 446, attached to Howe aff.). Administrative Regulation 506 ("A.R. 506") requires review of regular classification of inmates at least every six months, and inmates housed in administrative or protective segregation may be reviewed more frequently (#159, Exh. BB). However, formal hearings are not routinely held every six months (#159, Exh. L-1, Shaulis resp. 77), and while STG membership can be discussed at classification hearings, it cannot be reviewed or challenged (#159, Exh. N-2, Irvin resp. 7, 15, 18). The only issue considered at the semi-annual classification review is whether the inmate has been validated as an STG (#159, Exh. N-2, Irvin resp. 9).

1 In November 1999, plaintiff completed his term in disciplinary segregation and entered the
2 prison's general population (#94, ¶ 11). As noted earlier, NDOC continued to experience ongoing
3 violence among Hispanic gangs (#142, p. 10, attached Neven aff. & attached plaintiff depo, p. 34) and
4 adopted Administrative Regulation 446 ("A.R. 446") to identify and manage gang members (#144,
5 sealed copy of NDOPI.B. 99-05, adopted as A.R. 446, effective Oct. 14, 1999). ESP also began to move
6 Hispanic gang members in the general population to more restrictive housing units to protect them,
7 other inmates, and prison staff (#142, p. 10 & attached Neven aff.).⁴

8 Defendants officially validated plaintiff during a hearing on January 23, 2003 (#94, ¶ 32).
9 Plaintiff grieved his STG status and his detention level, but these grievances were denied because
10 plaintiff had already grieved this issue (#94 ¶ 73-75; #159, Exhibit S-2, Conmay resp. 10). As a result
11 of plaintiff's validation, defendants continue to consider him a security threat and will not approve his
12 classification to less restrictive housing (#142, p. 10 & attached Neven aff.). Prison officials initially
13 classified plaintiff as a Level 4 inmate in Unit 5, a special management/transition unit for inmates
14 entering the general population after disciplinary segregation (#94, ¶ 11; #142, attached ESP I.P. 7.35).
15 Prison officials later advanced plaintiff to a Level 3 classification in Unit 6 before returning him to Unit
16 5 (#94, ¶ 13; #163, p. 11). Both classifications require plaintiff to remain in his cell twenty-three hours
17 a day (#163, p. 25; #159, exh. AA, ESP I.P. 7.38 & 7.39. See also ESP I.P. 7.35 (#142, attached exh.,
18 describing additional restrictions)). Plaintiff currently resides in Level 3, despite his transfer to Unit 6,
19 since ESP eliminated Level 4 classifications in January 2004 (#159, Exh. N-2, Irvin resp. 2, 13; #142,
20 attached ESP I.P. 7.35, effective Jan. 20, 2004). Apart from being required to remain in their cells
21 twenty-three hours a day, inmates housed in Level 3 have no outside yard access and are limited to the
22 unit recreation yard, there is no tier time, canteen requests are delivered, meals are served in the unit,
23 there is no chapel access other than religious requests made through the chaplain, education course work
24

25 ⁴General population inmates are subject to the prison's level classification system, which rewards the best behaved
26 inmates with Level 1 or 2 classification in the least-restrictive housing units, Nos. 7 and 8 (#142, attached ESP I.P. 7.35).
27 Inmates with previous problems involving conduct, discipline, work assignments, and program activities receive a Level 3
28 or 4 classification (ESP eliminated Level 4 classifications in January 2004) and are held in more restrictive units, Nos. 5 and 6. *Id.*

McDaniel, Dwight Neven, Adam Endel, Geoffrey Swann, Patrick Conmay, Dahn Shaulis, and Lorena Irvin (collectively, "defendants") (#94). Specifically, plaintiff contends that defendants validated him as a gang member without notice or an effective hearing, and that defendants have not provided due process to review plaintiff's subsequent classification in *de facto* administrative segregation (#94, ¶ 64).⁶

Count II

Plaintiff asserts that defendants violated his Fourteenth Amendment right to equal protection by applying the level classification system and gang regulation to him when NDOC does not apply it to non-Hispanic and female inmates (#94, ¶¶ 82-83; #163, pp. 28-31).

Count IV

Plaintiff contends that defendants violated his First Amendment right of access to the courts and retaliated against him for filing a lawsuit by modifying A.R. 446 to validate plaintiff as a gang member (#94, ¶¶ 51-58).

II. DISCUSSION AND ANALYSIS

A. Discussion

1. Motion for Summary Judgment

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). The burden of demonstrating the absence of a genuine issue of material fact lies with the moving party, *Zoslaw v. MCA Distr. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982), and for this purpose, the material lodged by the moving party must be viewed in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Baker v. Centennial Ins. Co.*, 970 F.2d 660, 662 (9th Cir. 1992). A material issue of fact is one that affects the outcome of the litigation and

⁶Plaintiff also alleges that defendants must provide additional due process because defendants effectively placed him in protective custody—a form of administrative segregation—when they validated him as a MRU member (#163, p. 14). ESP I.P. 7.17 (#159, exh. AA).

3. Fourteenth Amendment's Equal Protection Clause

"Prisoners are protected under the Equal Protection Clause of the Fourteenth Amendment from invidious discrimination based on race." *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974); see also *Johnson v. California*, ___ U.S. ___, 125 S. Ct. 1141, 1148 (2005) (applying strict scrutiny to racial segregation in prisons). The Equal Protection Clause also requires a heightened review of a prisoner's allegations of discrimination on the basis of gender. *McCoy v. Nevada Dep't of Prisons*, 776 F. Supp. 521, 523-24 (D. Nev. 1991). To establish a violation of the Equal Protection Clause, the prisoner must present evidence of discriminatory intent. See *Washington v. Davis*, 426 U.S. 229, 239-40 (1976).

4. First Amendment Right of Access to the Courts

Prisoners have a right to meaningful access to the courts, and prison authorities may not penalize or retaliate against an inmate for exercising this right. *Bradley v. Hall*, 64 F.3d 1276, 1279 (9th Cir. 1995). Prison officials may be sued under Section 1983 for retaliating against a prisoner for exercising his or her constitutional rights. *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1313 (9th Cir. 1989). A retaliation claim involves five elements: "(1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not advance a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005), citing *Resnick v. Hayes*, 213 F.3d 443, 449 (9th Cir. 2000), and *Barnett v. Centoni*, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curiam). An inmate can show that his rights were chilled with evidence of an actual injury. *Id.* at 567 n.11.

Such claims must be evaluated in light of the deference accorded to prison officials. *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1997). The inmate bears the burden of pleading and proving the absence of legitimate correctional goals for the alleged retaliatory action. *Id.* at 806.

5. Qualified Immunity

The defense of qualified immunity protects state officials sued in their individual capacities unless the conduct complained of violates a clearly established constitutional or statutory right of which a reasonable person would have known. See, e.g., *Jackson v. City of Bremerton*, 268 F.3d 646, 650 (9th

1 p. 25; #159, exh. AA, ESP I.P. 7.38 & 7.39). From November 1999 until January 2003, plaintiff had
2 no hearing at all to review his STG status. Plaintiff could only discuss his STG status at semi-annual
3 classification hearings, but he was not permitted to challenge or seek review of his status; therefore,
4 the classification hearing provided no process by which plaintiff could challenge his validation. In
5 addition, the NDOC grievance procedure provided plaintiff with no genuine recourse to challenge his
6 status, especially since defendants prohibited plaintiff from grieving his STG status after his first
7 grievance on this issue was denied. [Defendants acknowledge that plaintiff will be held under these
8 conditions indefinitely unless he debriefs prison officials about his gang knowledge (#163, p. 9; #159,
9 exhs. G-5½ & K-3).] In other words, the only real way out of STG status is to become a snitch – to
10 provide information about other inmates' gang activities and risk retaliation for doing so.

11 Having determined that a liberty interest exists, the court turns to the question of what process
12 is due an inmate who is validated as an STG member. *Mathews v. Eldridge*, 424 U.S. 319 (1976) requires
13 consideration of three distinct factors:

14 First, the private interest that will be affected by the official action; second the
15 risk of an erroneous deprivation of such interests through the procedures used
16 and the probable value, if any, of additional or substitute procedural safeguards;
17 and finally, the Government's interest, including the function involved and the
18 fiscal and administrative burdens that the additional or substitute procedurals
19 requirement would entail.

20 *Id.* at 335. Each factor is discussed below.

21 Plaintiff certainly has an interest in both avoiding validation as an STG member and in
22 indefinite designation as an STG member. However, "[p]risoners held in lawful confinement have their
23 liberty curtailed by definition, so the procedural protections to which they are entitled are more limited
24 than in cases where the right at stake is the right to be free from confinement at all." *Wilkinson v.*
25 *Austin*, 545 U.S. ____, 125 S. Ct. 2384, 2395 (2005) (citations omitted). Therefore, plaintiff's private
26 interest must be considered within the context of prison life and the resulting limitations of liberties.

27 *Id.*

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1 Oregon State Penitentiary ("OSP"), the prison in Ohio designed to separate the most dangerous inmates
2 from the prison population and to address the gang membership in prison. *Id.* at 2388, 2396. The Court
3 acknowledged the very real and constant danger that prison gangs present:

4 Prison security, imperiled by the brutal reality of prison gangs, provides
5 the backdrop for the State's interest. Clandestine, organized, fueled by
6 race-based hostility, and committed to fear and violence as a means of
disciplining their own members and their rivals, gangs seek nothing less
than to control prison life and to extend their power outside prison walls.

7 *Id.* At 2396. The Wilkinson court also recognized the economic realities prisons face, which require
8 prison officials to allocate scarce resources to prison security issues, particularly the costs associated with
9 housing the most serious offenders, and noted that courts must give great deference to prison
10 management decisions "before mandating additional expenditures for elaborate procedural safeguard...."
11 *Id.* at 2397. Having reviewed the detailed levels of review at OSP for the classification of prisoners,
12 the Court held that its procedures were adequate to safeguard a prisoner's interest in not being assigned
13 to OSP. *Id.* at 2398.

14 The court has considered NDOC's procedures for validation of plaintiff as an STG, and the
15 balance of the *Mathews* factors leads this court to conclude that A.R. 446 does not afford plaintiff the
16 minimal procedural due process protections to which he is entitled. Plaintiff's indefinite detention in
→ 17 de facto administrative segregation creates a liberty interest and requires procedural due process
18 protection. At this juncture in the proceedings, and without evidence to the contrary from defendants,
19 the court finds that there is a genuine issue of material fact concerning whether defendants provided
20 plaintiff with meaningful review of his informal and formal validation as a gang member, and whether
21 it comports with due process. The court denies defendants' motion for summary judgment (#142) on
22 count I.

23 a. Qualified Immunity

24 Qualified immunity analysis occurs in two stages. First, the court must inquire whether the
25 plaintiff has established a constitutional violation. If this threshold is passed, the court must consider
26 whether defendants' actions violated "clearly established statutory or constitutional rights of which a
27 reasonable person would have known." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (quotation marks and
28

1 review of plaintiff's validation and classification thereafter. The court finds that defendants did have
2 such notice. The Fourteenth Amendment's Due Process Clause entitles an inmate to certain due process
3 protections when he or she is charged with a disciplinary violation. *Wolff v. McDonnell*, 418 U.S. 539,
4 564-75 (1974). "Such protections include the rights to call witnesses, to present documentary evidence
5 and to have a written statement by the factfinder as to the evidence relied upon and the reasons for the
6 disciplinary action taken." *Serrano v. Francis*, 345 F.3d 1071, 1078-79 (9th Cir. 2003) (citation omitted).
7 As earlier noted, these procedural protections attach only when the disciplinary action implicates a
8 protected liberty interest in some "unexpected matter" or imposes an "atypical and significant hardship
9 on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 515 U.S. 472, 484
10 (1995). In 1983, the Supreme Court held that where, as here, a liberty interest is implicated, due process
11 requires that prison officials engage in some sort of periodic review of an inmate's confinement in
12 administrative segregation. *Hewitt v. Helms*, 459 U.S. 460, 477 (1983). However, such a periodic
13 review must amount to more than "meaningless gestures," *Toussaint v. Rowland*, 711 F.Supp. 536, 540,
14 n. 11 (N.D.Cal. 1989 (citing *Toussaint v. McCarthy*, 801 F.2d 1080 at 1102 (9th Cir. 1986))) (reversed
15 and vacated in part by *Toussaint v. McCarthy*, 926 F.2d 800 (9th Cir. 1990), and may not be a "sham."
16 *See id.*

17 The court finds that defendants had fair warning that validation and classification of inmates
18 for an indefinite period of time in administrative or protective segregation triggered due process
19 protections. *Toussaint v. McCarthy*, 801 F.2d 1080 (9th Cir. 1986); *Madrid v. Gomez*, 889 F.Supp. 1146
20 (N.D.Cal. 1995). The due process afforded inmates placed for an indefinite term in a segregation unit
21 has been the subject of inmate litigation since the 1970s, and the focus of that inquiry is exactly what
22 process is due. *See, e.g., Madrid v. Gomez, supra.* In this proceeding, defendants have declared that
23 no process is due (#154, exh. S-1, Conmay resp. 3; Exh. U-3, Crawford resp. 1, 2, 3, 4, 5, 11, 19).
24 Indeed, NDOC's institutional procedures and administrative regulations concerning STG status are
25 labyrinthian, and appear to provide no meaningful procedural protections to inmates before or after the
26 are validated as STG members. For these reasons, the court concludes that defendants are not entitled
27 to qualified immunity at this stage of the proceedings.

1 security concerns due to ongoing violence among Hispanic gang members (#142, p. 10 & attached
2 Neven aff; #159, exh. G5½). There is no evidence that defendants acted with a racially discriminatory
3 motive in validating or classifying plaintiff, and the court grants defendants' motion for summary
4 judgment (#142) on count II. *Washington*, 426 U.S. at 239-40.

5 Plaintiff contends that after he filed his lawsuit in October 2002 (#8), NDOC retaliated by
6 revising A.R. 446 in January 2003 and officially validating plaintiff three days later (#94, ¶¶ 51-58).⁷
7 Defendants move for summary judgment on grounds that the validation hearing did not injure plaintiff
8 and furthered a legitimate penological goal (#142, pp. 18-21). A claim of retaliation in violation of
9 the First Amendment right of access to the court involves five elements: "(1) An assertion that a state
10 actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct,
11 and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action
12 did not advance a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir.
13 2005) (9th Cir. 2005) (citations omitted). An inmate can show that his rights were chilled with
14 evidence of an actual injury. *Id.* at 567 n.11. Such claims must be evaluated in light of the deference
15 accorded to prison officials. *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1997).

16 [Plaintiff alleges that defendants validated him as a gang member because of his litigation, which
17 satisfies the first three elements for a retaliation claim.] *Rhodes*, 408 F.3d at 567. However, there is no
18 evidence that the validation chilled (or caused an injury that chilled) plaintiff's First Amendment rights.
19 *Id.* The court is not persuaded by plaintiff's argument that he suffered an injury in May 2004, more than
20 a year after defendants allegedly retaliated by officially validating him, when the parole board did not
21 consider plaintiff's application (#163, p. 32-33; #159, exhs. Y4-5). The parole board's decision turned
22 on the prison's psychological review panel, which recommended that plaintiff remain incarcerated
23 because of his violent history, continued violence in prison, manipulative behavior, and gang
24 involvement (#159, exh. Y-1). Although the psychological review panel cited plaintiff's gang
25 association, plaintiff provides no evidence that his validation played a substantial and motivating factor

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27 ⁷Plaintiff also alleges that defendants retaliated against him four other times, but he does not elaborate on his
28 allegation (#163, p. 31).

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III. CONCLUSION

Based on the foregoing and for good cause appearing, the court recommends that defendants' motion for summary judgment (#142) be DENIED on count I and GRANTED on counts II and IV. The court also recommends that summary judgment be GRANTED as to Governor Guinn. Finally, the court recommends that summary judgment be DENIED as to the remaining defendants on the ground of qualified immunity. If the court adopts this recommendation, plaintiffs only remaining claim is Count I against NDOC Director Crawford and defendants Slansky, McDaniel, Neven, Endel, Swann, Conmay, Shaulis, and Irvin.

The parties are advised:

1. Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule IB 3-2 of the Local Rules of Practice, the parties may file specific written objections to this report and recommendation within ten days of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the District Court.

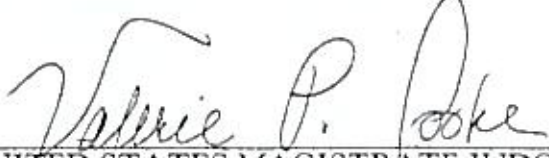
2. This report and recommendation is not an appealable order and any notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's judgment.

IV. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that defendants' motion for summary judgment (#142) be:

1. DENIED on Count I.
2. GRANTED on Counts II and IV.
3. GRANTED as to Governor Guinn.
4. DENIED as to the remaining defendants on qualified immunity grounds.

DATED: July 4, 2005.


UNITED STATES MAGISTRATE JUDGE

SMU PLACEMENT & RETENTION
OF STG/DC's

STANDARD OF REVIEW

Ad.Seg. cannot be used as a pretext for indefinite commitment of an inmate. MADRID v. CCNEZ, 889 F.Supp. 1146, 1274 (N.D.Cal.1995), citing Hewitt v. Helms, 459 U.S. 460, 477, n.4 (1983).

Nevada State law and Federal law creates a liberty interest for inmates to remain free from arbitrary Disciplinary or Administrative sanctions. WALKER v. SUMNER, 14 F.3d 1415 (9th C 1994); REYNOLDS v. WOLFF, 916 F.Supp. 1018 (D.Nv.1996); NELSON v. PFYAN, 607 F.Supp. 959 (D.Nv.1985); SANDIN v. CONNER, 515 U.S. 472 (1995)

The Courts in this circuit have repeatedly held that State Statutes or Regulations restrict the power of prison officials to impose an indefinite SHU sentence. TOUSSAINT v. MCCARTHY, 801 F.2d 1090 (9th C.1986).

Segregation of prison gang members in a SHU falls under the ambit of Ad.Seg. See, MADRID, supra, 889 F.Supp. at 1272-73; TOUSSAINT VI, 906 F.3d at 204.

Courts in the Ninth Circuit have consistently ruled that prolonged segregation in the SHU implicates a State protected liberty interest. KOCH v. LEWIS, 216 F.Supp.2d 994 (D.Az.2001).

GANG POLICY

In cases of gang affiliation, prison officials must first designate the prisoner as being a current active gang affiliate prior to any decision to retain him in Segregation for an indeterminate period. MADRID, supra at 1273-74, citing TOUSSAINT v. ROWLAND, 711 F.Supp. 526 (N.D.Cal.1989), at 540-43

Consistent with constitutional command, Departmental Regulations should require that at least three (3) reliable independent source pieces of evidence support a gang validation. And further, at least one of the three pieces of evidence must be a "direct link" to a validated member. MADRID, 889 F.Supp. at 1242, n.188. See also anecdotal reference at: Cal Code Regs. tit.15, Sec:3378(c)(3)(4).

Under Cal. Dep't Corrections (CDC) Rules, gang identification must be documented by reference to specific types of evidence, including the following:

- 1) Self admissions;
- 2) Tattoos & Symbols;
- 3) Written materials;
- 4) Photo's;
- 5) Staff Information;
- 6) Information from other Agencies;
- 7) Association with known gang members;
- 8) Confidential Information indicating gang affiliation;
- 9) Commitment offense circumstances;
- 10) Probation Officer report or Court Transcripts;
- 11) Visits from gang runners or members;
- 12) Communications, such as letters or documentation of phone conversations; and
- 13) Debriefing Reports from other inmates. See, 15 CCR §3378 (c)(8).

SEGREGATION **

1. PLACEMENT;

In order for an inmate's placement and retention in Segregation to be valid, it must be supported by some evidence. TOUSSAINT Supra, 801 F.2d at 1104.

4). NDOC's policy does not inform [any] inmate that validation as an STG/DC can entail collateral consequences. I.e., Validation can result in the inmate being housed in a SMU for an indeterminate term; or, that Validation as an STG/DC member can will be utilized as a Dynamic Factor by the Nv. Parole Board when assessing the statistical risk score of the inmate's suitability for parole release, inter alia.

* → 5) NDOC's policy does not allow a validated inmate an opportunity to make a personal appearance to present his views during any periodic review of his STG/DC status, and,

6). NDOC's policy, outside of debriefing, does not provide for any type of Release Review. e.g., Release from indeterminate SMU confinement or STG status altogether, can occur upon proof of gang drop out or inactive status.

7). Debriefing violations from AMENDMENT.
CONCLUSION

The NDOC should establish a Pilot Program -Transitional Housing Unit, to place under observation for a period of time, those inmates who are alleging to be inactive or drop-outs. For instance; Once validated, release from an indeterminate Ad Sec. in a SMU can/will occur only if: 1) the prisoner successfully challenges the validation or placement by virtue of an STG Administrative Appeal or Court Action, 2) NDOC subsequently determines that it somehow made a mistake in validating the prisoner, 3) NDOC determines the prisoner is an "inactive gang member," or 4) NDOC revalidates the prisoner as an official gang drop-out, through debriefing or otherwise.

For anecdotal information, refer to 15 Cal.Cde Regs § 3341.5(c)(5) & 2778(c); (A prisoner who is validated as a gang member or associate, but still housed in C.P., may be considered for verification of inactive status if he/she has not been involved in any gang activity for at least two (2) years.).

Inactive means that the prisoner has not been involved in gang activity for a minimum of five years, and the inactive status must be approved by the T.C. Office. Those who are deemed inactive or drop outs and suitable for SMU release should be placed in a level-IV C.P. housing unit for up to one (1) year of observation; upon successful completion of this period, the prisoner is to be housed in a facility commensurate with any safety or security needs and/or consistent with his/her individual Classification Scores. Should an inmate be found at a later date to be re-associating/affiliating with a gang, he/she must successfully complete the whole process once again.

To meet the constitutional requirements of Notice and Justification, when inmates are reclassified to a higher STG status, the policy must clearly be inmate accessible, stating clearly the factors to be used for that reclassification process. AUSTIN vs. WILKINSON, 189 F.Supp.2d 719 (N.D.Cal. 2002); cert. granted, Wilkinson v. Austin, 125 S.Ct. 2364 (2005).

Indeed, [any] procedures set forth in the regulations are not optional, but mandatory for all inmates whom are to be placed and retained in a SMU. McCLARY, 4 F.Supp.2d at 211

If renunciation is merely a way to force inmates to implicate other inmates on the record, the system has little assurance of reliability or truthfulness, but rather, rewards the fabrication of evidence. - Assuredly, inmates cannot effectively renounce a membership that they never embraced in the first place. See, MARRID, 2001 F.Supp.2d 1273-74.

A.R. 446 has no meaningful RELEASE REVIEW; INACTIVE STATUS REVIEW; and/or DROP-OUT REVIEW.